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Federal Communications Commission
Office of Secretary

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Amendment of the Commission's Rules
to Establish Part 27, the Wireless
Communications Service ("WCS")

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GN Docket No. 96-228

To: The Commission

REPLY COMMENTS
OF THE
INDUSTRIAL TELECOMMUNICATIONS ASSOCIATION, INC.

The Industrial Telecommunications Association, Inc. ("ITA") respectfully submits these Reply Comments in response to the various comments filed December 4, 1996 in this proceeding.

I. REPLY COMMENTS

1. There is a daunting array of expectations facing the Federal Communications Commission in this proceeding. Congress expects the Commission to auction the 30 megahertz of spectrum in the 2305-2320 MHz and 2345-2360 MHz bands and raise \$2.9 billion in the process. Congress also expects the Commission to find a way to accommodate the needs of public safety entities.

2. The commenters have added their own list of expectations. Without exception, the equipment manufacturers who filed comments in this proceeding expect the Commission to

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provide definitive guidance regarding how the 2305-2320 MHz and 2345-2360 MHz frequency bands will be allocated. Those commenters who are concerned about the integrity of the administrative law process expect the Commission to adhere to the letter and spirit of the statutory prohibition against using competitive bidding as a substitute for traditional allocation criteria.

3. With respect to the equipment manufacturing issue, the Commission should take seriously the words of caution from Motorola, Alcatel Network Systems, Telecommunications Industry Association and Lucent Technologies. In this instance, the Commission must respect and apply the lessons of past history. Lucent Technologies observes that, contrary to the Commission's hopes, the 1995 allocation of 4 GHz frequencies for the "General Wireless Communications Service"¹ has not, to date, stimulated any appreciable research and investment in the GWCS spectrum. The reason, Lucent states, is that the allocation suffered from a crippling lack of definition. "Lacking adequate service definition, the development of GWCS services has been neither rapid nor efficient."² Motorola cites a similar experience with the 1986 allocation of 901-902 and 940-941 MHz for the "General

¹ In re Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use, ET Docket No. 94-32, First Report and Order and Second Notice of Proposed Rule Making, 10 FCC Rcd. 4769 (1995); Second Report and Order, 11 FCC Rcd. 624 (1995).

² Comments of Lucent Technologies, page 5.

Purpose Mobile Service."³ Given the lack of definition and detail, there was little incentive for the manufacturers to get involved in producing equipment for this service as well.

4. It is not sufficient for the FCC merely to make frequency bands available for use. The Commission must also ensure there are adequate incentives to stimulate interest among the manufacturers. The message from the manufacturers is clear: to stimulate their interest, an allocation decision must be more than an "undefined experiment." There must be:

- a recognition that lack of systematic frequency allocation and planning is wasteful of spectrum (TIA, page 13);
- a regulatory structure that will foster market-wide momentum instead of an approach that defines the allocation on the basis of operator-by-operator investment decisions (Motorola, page 6);
- a real allocation decision for a specifically defined use, reached in consultation with users, providers and manufacturers (Lucent Technologies, page 3; Motorola, page 6);
- rules to ensure that only services with similar transmitter and receiver characteristics share the same allocation, so as to limit inter-user interference (TIA, page 10; Alcatel, page 3);
- a tangible basis on which manufacturers can assess the developmental cost of the equipment, the approximate number of units to be sold, and the retail cost of their products (Alcatel, pages 3-4).

³ In re Amendment of the Commission's Rules to Allocate Frequencies in the 900 MHz Reserve Band, Report and Order, GEN Docket Nos. 84-1231, 84-1233 and 84-1234, 2 FCC Rcd. 1825 (1996).

5. The unmistakable message of the manufacturers is that uncertainty in an allocation directly translates into uncertainty in the manufacturing process. Uncertainty in the manufacturing process leads, in turn, to uncertainty in the financial markets and the diversion of potential investment funds to other opportunities.

6. Fortuitously, if the Commission abandons its plan to use competitive bidding to allocate the spectrum, it will go a long way to solving a number of potential problems. Assuming the Commission does remedy the deficiencies identified by the manufacturers, it will cure the most conspicuous legal defect in the proposal. As noted by TIA and others, Congress clearly intended competitive bidding to be used as an assignment device, not as an allocation mechanism. Section 309(j) of the Communications Act explicitly states that the legislative authority to conduct competitive bidding does not alter the criteria traditionally used to make spectrum allocation decisions.

7. By taking positive steps to allocate the available spectrum for its most appropriate use, the Commission will be able to: (1) provide the degree of certainty required by manufacturers; (2) ensure fidelity to the Communications Act; (3) provide financial markets with confidence in 2.3 GHz investment

opportunities; and (4) rescue a very valuable portion of the radio spectrum that otherwise may remain vastly underutilized.

8. ITA urges the Commission to follow the well-founded advice of the manufacturing community and conform its decisions in the instant proceeding to the requirements of the Communications Act. As noted in a recent issue of the Commlaw Conspectus, "although the Commission is permitted to take market forces into account when allocating the radio spectrum, it cannot allow market forces to dictate spectrum allocations."⁴ Unless the Commission revamps significantly its plans for the 2.3 GHz band, it risks violating the explicit requirements of the Communications Act and jeopardizing the viability of the band for years to come.

WHEREFORE, THE PREMISES CONSIDERED, the Industrial Telecommunications Association, Inc. respectfully submits these

⁴ Becht, *The General Wireless Communications Service: FCC Spectrum Traffic Cop or Broker?*, 4 Commlaw Conspectus 95 (1996).

Reply Comments and urges the Federal Communications Commission to act in accordance with the views expressed herein.

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